

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

FRANK CHARLES,

Petitioner,

vs.

T. FELKER, Warden,

Respondent.

No. C 06-4568 PJH (PR)

**ORDER GRANTING
CERTIFICATE OF
APPEALABILITY**

This is a habeas case under 28 U.S.C. § 2254 filed pro se by a state prisoner. The court denied the petition in a ruling entered on September 10, 2009. Petitioner has filed a notice of appeal, a motion for a certificate of appealability, and a motion for appointment of counsel.

A petitioner may not appeal a final order in a federal habeas corpus proceeding without first obtaining a certificate of appealability (formerly known as a certificate of probable cause to appeal). See 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b). A judge shall grant a certificate of appealability "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The certificate must indicate which issues satisfy this standard. See *id.* § 2253(c)(3). "Where a district court has rejected the constitutional claims on the merits, the showing required to satisfy § 2253(c) is straightforward: the petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Slack v. McDaniel*, 120 S.Ct. 1595, 1604 (2000). If the certificate is granted, the court must specify the issue or is

sues it has found to satisfy the standard for granting a COA. 28 U.S.C. § 2253(c)(3)

The court concludes that reasonable jurists might find the result on petitioner's first issue, a *Batson*¹ claim, to be debatable. The motion for a certificate of appealability (document number 30 on the docket) therefore is **GRANTED** as to issue one. It is denied as to issues two and three for the reasons set out in the ruling.

Petitioner's motion for appointment of counsel (document number 31) is **DENIED** without prejudice to renewing it in the court of appeals.

IT IS SO ORDERED.

Dated: October 19, 2009.



PHYLLIS J. HAMILTON
United States District Judge

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¹ *Batson v. Kentucky*, 476 U.S. 79, 89 (1986).